

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT TACOMA

EDMUND F BALL III,

Petitioner,

v.

RON HAYNES,

Respondent.

Case No. C19-CV-05135-RBL-TLF

ORDER DENYING MOTION FOR  
COUNSEL

Petitioner proceeds pro se in this habeas corpus action pursuant to 28 U.S.C. § 2254. The petition has been served and respondent has filed an answer. This matter is before the Court on petitioner's motion seeking appointment of counsel (Dkt. 21). For the reasons set forth below, petitioner's motion is DENIED.


Counsel need not be appointed in cases brought under 28 U.S.C. § 2254, unless an evidentiary hearing is required or such appointment is "necessary for the effective utilization of discovery procedures." See *McCleskey v. Zant*, 499 U.S. 467, 495 (1991); *United States v. Duarte-Higareda*, 68 F.3d 369, 370 (9th Cir. 1995); *United States v. Angelone*, 894 F.2d 1129, 1130 (9th Cir. 1990); *Weygandt v. Look*, 718 F.2d 952, 954 (9th Cir. 1983); Rules Governing Section 2254 Cases in the United States District Courts 6(a) and 8(c). The Court also may appoint counsel "at any stage of the case if the interest of justice so requires." *Weygandt*, 718 F.2d at 754. In deciding whether to appoint counsel, the Court "must evaluate the likelihood of success on the merits as

1 well as the ability of the petitioner to articulate his claims pro se in light of the complexity  
2 of the legal issues involved.” *Id.*

3 Here, it does not appear at this point that an evidentiary hearing is required as  
4 respondent’s answer argues only that the petition is untimely. Petitioner has also not  
5 shown a likelihood of success on the merits as, based upon the briefing currently before  
6 the Court, it appears the petition may be barred by the AEDPA statute of limitations. 28  
7 U.S.C. § 2244(d). Furthermore, it appears at this point that petitioner is able to  
8 adequately articulate his claims pro se. The Court also notes that the only issue raised  
9 in respondent’s answer is that of timeliness.

10 Accordingly, the Court denies petitioner’s motion for appointment of counsel (Dkt.  
11 21) without prejudice.

12 Dated this 19<sup>th</sup> day of August, 2020.

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15 Theresa L. Fricke  
16 United States Magistrate Judge  
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